TENAGA NASIONAL BHD

v.

KAMARSTONE SDN BHD

COURT OF APPEAL, PUTRAJAYA
HISHAMUDIN MOHD YUNUS JCA
BALIA YUSOF WAHI JCA
AZIAH ALI JCA
[APPEAL NO: A-02(IM)-3448-2010]
8 MAY 2013

UTILITIES: *Electricity - Usage - Claim for amount undercharged - Whether reg. 11(2) Licensee Supply Regulations 1990 allows undercharging for period of three months only - Whether reg. 11(2) applied retrospectively*

The appellant and the respondent entered into an electricity supply agreement on 15 August 1996 to increase electricity supply from 610kw to 1,210kw for the respondent's premises. The appellant, realising that there was a mistake, issued two letters to the respondent dated 13 January 2003 and 29 July 2003 notifying that a multiplication factor of X50 was used instead of X100. The appellant averred that the respondent was undercharged for 75 months and consequently claimed for the amount of RM581,876.77. The learned Judicial Commissioner ('JC'), in dismissing the appellant's claim, took the view that under reg. 11(2) of the Licensee Supply Regulations 1990 ('the Regulations'), the appellant could only claim for the amount undercharged for a period of three months. Hence, the appellant appealed and the issue that arose for determination was whether reg. 11(2) of the Regulations was applicable in the instant case.

Held (dismissing appeal with costs)
Per Balia Yusof Wahi JCA delivering the judgment of the court:

(1) The amended reg. 11(2) of the Regulations only allows undercharging of not more than three months from the date the defendant had been informed about being undercharged (*Tenaga Nasional Bhd v. Calsonic Compressor (Malaysia) Sdn Bhd*; refd). The facts evidently showed that the respondent was only informed of the undercharging on 13 January 2003.

A Further, the learned JC had taken into consideration the appellant's own admission that their cause of action only arose on 13 January 2003. Considering that the respondent had paid for electricity bills for the months of May, June and July 2003, there was nothing owed to the appellant. Hence, there
B was no merit in the appeal. (paras 4, 7, 8 & 10)

Bahasa Malaysia *Translation Of Headnotes*

Perayu dan responden telah memeterai perjanjian bekalan elektrik
C pada 15 Ogos 1996 untuk meningkatkan bekalan elektrik daripada 610kw kepada 1,210kw untuk premis responden. Apabila disedari bahawa terdapat kesilapan, perayu telah mengeluarkan dua surat kepada responden bertarikh 13 Januari 2003 dan 29 Julai 2003 memaklumkan bahawa faktor pendaraban X50 telah digunakan dan
D bukan X100. Perayu mendakwa bahawa responden telah dikurangcaj selama 75 bulan dan seterusnya membuat tuntutan untuk jumlah RM581,876,77. Yang Arif Pesuruhjaya Kehakiman ('PK'), dalam menolak tuntutan perayu, berpendapat bahawa di bawah peraturan 11 (2) Peraturan-Peraturan Bekalan Pemegang
E Lesen 1990 ('Peraturan-Peraturan'), perayu hanya boleh membuat tuntutan bagi jumlah yang dikurangcaj untuk tempoh tiga bulan sahaja. Oleh itu, perayu merayu dan isu yang dibangkitkan untuk pertimbangan adalah sama ada peraturan 11 (2) Peraturan-Peraturan terpakai dalam kes ini.

F **Diputuskan (menolak rayuan dengan kos)**
Oleh Balia Yusof Wahi HMR menyampaikan penghakiman mahkamah:

(1) Peraturan 11(2) Peraturan-Peraturan yang dipinda hanya
G membenarkan pengenaan jumlah terkurang caj tidak lebih daripada tiga bulan dari tarikh defendan telah dimaklumkan tentang dikurangcaj (*Tenaga Nasional Bhd v. Calsonic Compressor (Malaysia) Sdn Bhd*; dirujuk). Fakta-fakta jelas menunjukkan bahawa responden hanya dimaklumkan mengenai jumlah
H terkurang caj pada 13 Januari 2003. Tambahan, Yang Arif PK telah mengambilkira pengakuan perayu sendiri bahawa kausa tindakan mereka hanya berbangkit pada 13 Januari 2003. Memandangkan responden telah membayar bil-bil elektrik bagi bulan Mei, Jun dan Julai 2003, tiada apa-apa yang terhutang
I kepada perayu. Oleh itu, tidak ada merit dalam rayuan ini.

Case(s) referred to:

Tenaga Nasional Bhd v. Ban Heng Rice Mill (1952) Sdn Bhd [2010] 10 CLJ 590 HC ***(dist)***

Tenaga Nasional Bhd v. Calsonic Compressor (Malaysia) Sdn Bhd [2009] 9 CLJ 699 HC ***(refd)***

Tenaga Nasional Bhd v. Teck See Plastic Sdn Bhd [2007] 9 CLJ 161 HC ***(dist)***

Legislation referred to:

Licensee Supply Regulations 1990, reg. 11(2)
Limitation Act 1953, s. 29

For the appellant - Abu Bakar Jais (Helmi Hamzah & Nurzali Mohd with him); M/s Hisham Sobri & Kadir
For the respondent - Loong Chet Siean; M/s Loong & Assocs

[Appeal from High Court, Ipoh; Civil Suit No: MT4-22-228-2005]

Reported by Shah Saharudin

JUDGMENT

Balia Yusof Wahi JCA:

Background

[1] The respondent applied for an additional load of electricity supply to its premises from 610kw to 1,210kw. Upon approval, a supply contract was signed on 15 August 1996 from which date the electricity supply to the respondent's premises was increased to the agreed 1,210kw.

[2] By two letters dated 13 January 2003 and 29 July 2003, the appellant informed the respondent that there was a mistake on the part of the appellant in using the multiplication factor. Instead of the (X100) multiplication factor for the new supply, a multiplication factor of (X50) was used. As a result, the respondent had been undercharged for a period of 75 months and the amount undercharged was RM581,876.77. The appellant demanded for the payment of the said amount. The respondent offered to pay the appellant RM28,328.40 in ten monthly instalments. The appellant refused and filed a suit claiming the sum of RM581,876.77 together with interest and costs. The suit was filed on 26 October 2005.

[3] The learned Judicial Commissioner (JC) dismissed the appellant's claim.

[4] In dismissing the appellant's claim, the learned JC ruled that limitation under s. 29 of the Limitation Act 1953 does not apply. The appellant's claim is not statute barred. The learned trial judge further held that by virtue of reg. 11(2) of the Licensee Supply Regulations 1990 the appellant could only claim for the undercharged amount for a period of only three months, namely, for the months of May, June and July 2003. Since the respondent had paid for the electricity bills for the aforesaid three months, there was nothing owing to the appellant. Hence the dismissal of the appellant's claim.

The Appeal

[5] The only issue in the appeal before us is whether the learned JC was right in holding that reg. 11(2) of the Licensee Supply Regulations 1990 is applicable to the case at hand. The appellant submitted that the regulation does not apply as the claim made by the appellant arose before the amendment to the said reg. 11(2). The amendment came into force on 15 December 2001 and has no retrospective effect. Reliance was placed on the case of *Tenaga Nasional Bhd v. Teck See Plastic Sdn Bhd* [2007] 9 CLJ 161 and *Tenaga Nasional Bhd v. Ban Heng Rice Mill (1952) Sdn Bhd* [2010] 10 CLJ 590.

[6] The amended reg. 11(2) of the Licensee Supply Regulations 1990 reads as follows:

> The reading of the consumer's meter shall be *prima facie* evidence of the amount of electricity consumed, provided that in the event a consumer has been undercharged or overcharged as a result of:
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> (a) Meter inaccuracy;
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> (b) Malfunctioning of the meter of its associated installation or part thereof;
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> (c) Incorrect meter reading;
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> (d) Incorrect application of a meter multiplying constant;
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> (e) Cross-connection of installation to different accounts; or
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> (f) Faulty installation,

the licensee shall make retrospective adjustments to the consumer's account in respect of consumption and demand for such period by taking into consideration the licensee's records, the consumer's consumption record and history, available technical evidence and other relevant circumstances to rectify such undercharged or overcharged situation:

Provided that the period for any retrospective adjustment shall not exceed three months from the date the consumer has been informed about being undercharged or overcharged.

[7] We agree with the learned JC on his interpretation of the said reg. 11(2) as stated in His Lordship's grounds of judgment at p. 19 of the appeal record part A. We further note that the learned JC has also taken into consideration the appellant's own admission made during submissions by learned counsel for the appellant that their cause of action arose from 13 January 2003. The facts clearly show that the respondent was only informed of the undercharging on 13 January 2003 *via* exh. P5.

[8] The learned JC found support on his interpretation of the said reg. 11(2) quoting a passage from *Tenaga Nasional Bhd v. Calsonic Compressor (Malaysia) Sdn Bhd* [2009] 9 CLJ 699; [2009] 8 MLJ 793 which says:

Applying sub-reg 11(2) of the Regulations to the instant case, the reading of the consumer's meter shall be *prima facie* evidence of the amount of electricity consumed. As the plaintiff had referred to its conduct in wrongfully programming the original meter installed at the defendant's premises as a mistake, ie, an incorrect meter reading for the purposes of sub-reg 11(2), it could be concluded that under the Regulations, the plaintiff had a right to claim against the defendant for the amount undercharged for the supply for electricity. However, the amended sub-reg 11(2) only allows undercharging of not more than three months from the date the defendant had been informed about being undercharged. As the defendant in this case was only informed of the undercharging on 12 April 2005, the plaintiff was only entitled to claim for the undercharged sum from the period 12 January 2005 till 12 April 2005. However, since the meter had been replaced since 2 November 2004 and the correct sum of charges has been billed to the defendant and duly settled by the defendant since that date, the plaintiff's claim for RM2,110,792.53 against the defendant was misconceived in law and unsustainable.

A **[9]** In our view, the learned JC has also rightly distinguished the two authorities relied on by the appellant as in both cases, the cause of action arose before the amendment of reg. 11(2) which came into force on 15 December 2001.

B **[10]** We found no merits in the appeal and the appeal is accordingly dismissed with costs of RM10,000. We further order that the deposit be paid towards costs.

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